

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RAYNELL IHILANI WILEY,
Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

Case No. EDCV 15-1618 JC

MEMORANDUM OPINION AND
ORDER OF REMAND

I. SUMMARY

On August 10, 2015, Raynell Ihilani Wiley (“plaintiff”) filed a Complaint seeking review of the Commissioner of Social Security’s denial of plaintiff’s applications for benefits. The parties have consented to proceed before the undersigned United States Magistrate Judge.

This matter is before the Court on the parties’ cross motions for summary judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”). The Court has taken both motions under submission without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; August 12, 2015 Case Management Order ¶ 5.

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1 Based on the record as a whole and the applicable law, the decision of the
 2 Commissioner is REVERSED AND REMANDED for further proceedings
 3 consistent with this Memorandum Opinion and Order of Remand.

4 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE** 5 **DECISION**

6 On April 10, 2012, plaintiff filed applications for Supplemental Security
 7 Income and Disability Insurance Benefits. (Administrative Record (“AR”) 10,
 8 139, 141). Plaintiff asserted that she became disabled on October 1, 2011, due to
 9 lupus. (AR 10, 173). The Administrative Law Judge (“ALJ”) examined the
 10 medical record and heard testimony from plaintiff (who was represented by
 11 counsel) and a vocational expert on September 23, 2013. (AR 21-39).

12 On September 26, 2013, the ALJ determined that plaintiff was not disabled
 13 through the date of the decision. (AR 10-17). Specifically, the ALJ found:
 14 (1) plaintiff suffered from the severe impairment “lupus (SLE)” (AR 12);
 15 (2) plaintiff’s impairment did not meet or medically equal a listed impairment¹
 16 (AR 13); (3) plaintiff retained the residual functional capacity to perform light
 17 work (20 C.F.R. §§ 404.1567(b), 416.967(b)) but was limited to frequent handling
 18 and fingering with the right dominant hand, could not work in direct sunlight, and
 19 could not be exposed to excessive heat or cold (AR 13); (4) plaintiff could not
 20 perform any past relevant work (AR 15); (5) there are jobs that exist in significant
 21

22 ¹At step three the ALJ made the following specific findings:

23
 24 The undersigned considered the claimant’s impairment under listing 14.02.
 25 The claimant’s impairment does not meet or medically equal the criteria of any
 26 medical listing. No treating or examining physician has recorded findings
 27 equivalent in severity to the criteria of any listed impairment, nor does the
 evidence show medical findings that are the same or equivalent to those of any
 listed impairment.

28 (AR 13).

1 numbers in the national economy that plaintiff could perform, specifically Cashier
 2 II, Mail clerk, and Office helper (AR 15-16); and (6) plaintiff's allegations
 3 regarding the intensity, persistence, and limiting effects of subjective symptoms
 4 were not entirely credible (AR 14).

5 The Appeals Council denied plaintiff's application for review. (AR 1).

6 **III. APPLICABLE LEGAL STANDARDS**

7 **A. Sequential Evaluation Process**

8 To qualify for disability benefits, a claimant must show that the claimant is
 9 unable "to engage in any substantial gainful activity by reason of any medically
 10 determinable physical or mental impairment which can be expected to result in
 11 death or which has lasted or can be expected to last for a continuous period of not
 12 less than 12 months." Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012)
 13 (quoting 42 U.S.C. § 423(d)(1)(A)) (internal quotation marks omitted). The
 14 impairment must render the claimant incapable of performing the work the
 15 claimant previously performed and incapable of performing any other substantial
 16 gainful employment that exists in the national economy. Tackett v. Apfel, 180
 17 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

18 In assessing whether a claimant is disabled, an ALJ is to follow a five-step
 19 sequential evaluation process:

- 20 (1) Is the claimant presently engaged in substantial gainful activity? If
 21 so, the claimant is not disabled. If not, proceed to step two.
- 22 (2) Is the claimant's alleged impairment sufficiently severe to limit
 23 the claimant's ability to work? If not, the claimant is not
 24 disabled. If so, proceed to step three.
- 25 (3) Does the claimant's impairment, or combination of
 26 impairments, meet or equal an impairment listed in 20 C.F.R.
 27 Part 404, Subpart P, Appendix 1? If so, the claimant is
 28 disabled. If not, proceed to step four.

(4) Does the claimant possess the residual functional capacity to perform claimant's past relevant work? If so, the claimant is not disabled. If not, proceed to step five.

(5) Does the claimant's residual functional capacity, when considered with the claimant's age, education, and work experience, allow the claimant to adjust to other work that exists in significant numbers in the national economy? If so, the claimant is not disabled. If not, the claimant is disabled.

Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th Cir. 2006) (citing 20 C.F.R. §§ 404.1520, 416.920); see also Molina, 674 F.3d at 1110 (same).

The claimant has the burden of proof at steps one through four, and the Commissioner has the burden of proof at step five. Bustamante v. Massanari, 262 F.3d 949, 953-54 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1098); see also Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (claimant carries initial burden of proving disability).

B. Standard of Review

Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of benefits only if it is not supported by substantial evidence or if it is based on legal error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir. 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457 (9th Cir. 1995)). Courts review only the reasons provided in the ALJ's decision, and the decision may not be affirmed on a ground upon which the ALJ did not rely. See Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007) (citing Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)).

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citations and quotations omitted). It is more than a mere scintilla but

1 less than a preponderance. Robbins, 466 F.3d at 882 (citing Young v. Sullivan,
2 911 F.2d 180, 183 (9th Cir. 1990)). To determine whether substantial evidence
3 supports a finding, a court must “consider the record as a whole, weighing both
4 evidence that supports and evidence that detracts from the [Commissioner’s]
5 conclusion.” Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001)
6 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). A denial of benefits
7 must be upheld if the evidence could reasonably support either affirming or
8 reversing the ALJ’s decision. Robbins, 466 F.3d at 882 (a court may not
9 substitute its judgment for that of the ALJ) (citing Flaten, 44 F.3d at 1457); see
10 also Molina, 674 F.3d at 1111 (“Even when the evidence is susceptible to more
11 than one rational interpretation, we must uphold the ALJ’s findings if they are
12 supported by inferences reasonably drawn from the record.”) (citation omitted).

13 Even when an ALJ’s decision contains error, it must still be affirmed if the
14 error was harmless. Treichler v. Commissioner of Social Security Administration,
15 775 F.3d 1090, 1099 (9th Cir. 2014). An ALJ’s error is harmless if (1) it was
16 inconsequential to the ultimate nondisability determination; or (2) the ALJ’s path
17 may reasonably be discerned, even if the ALJ explains the ALJ’s decision with
18 less than ideal clarity. Id. (citation, quotation marks, and internal quotations
19 marks omitted).

20 A reviewing court may not make independent findings based on the
21 evidence before the ALJ to conclude that the ALJ’s error was harmless.
22 Brown-Hunter v. Colvin, 806 F.3d 487, 492 (9th Cir. 2015) (citations omitted);
23 see also Marsh v. Colvin, 792 F.3d 1170, 1172 (9th Cir. 2015) (district court may
24 not use harmless error analysis to affirm decision on ground not invoked by ALJ)
25 (citation omitted). Where a reviewing court cannot confidently conclude that an
26 error was harmless, a remand for additional investigation or explanation is
27 generally appropriate. See Marsh, 792 F.3d at 1173.

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1 IV. DISCUSSION

2 Plaintiff contends that the ALJ failed properly to develop the record and
3 evaluate the medical evidence regarding Listing 14.02A, a listing that plausibly
4 applies to plaintiff's case. (Plaintiff's Motion at 2-6). The Court agrees. Since
5 the Court cannot find the ALJ's errors harmless, a limited remand is warranted.

6 A. Pertinent Law

7 At step three of the sequential evaluation process, the ALJ must determine
8 whether a claimant has an impairment or combination of impairments that meets
9 or equals a condition outlined in a listing. See 20 C.F.R. §§ 404.1520(d),
10 416.920(d). An impairment matches a listing if it meets all of the specified
11 medical criteria. Sullivan v. Zebley, 493 U.S. 521, 530 (1990), superseded by
12 statute on other grounds as stated in Kennedy v. Colvin, 738 F.3d 1172, 1174 (9th
13 Cir. 2013); Tackett, 180 F.3d at 1098. An impairment that manifests only some of
14 the criteria in a listing, no matter how severely, does not qualify. Sullivan, 493
15 U.S. at 530; Tackett, 180 F.3d at 1099.

16 Although a claimant has the burden of proving disability at step three, an
17 ALJ must still adequately discuss and evaluate the evidence before concluding that
18 a claimant's impairment or combination of impairments fail to meet or equal a
19 listing. See Marcia v. Sullivan, 900 F.2d 172, 176 (9th Cir. 1990) ("[I]n
20 determining whether a claimant equals a listing under step three . . . the ALJ must
21 explain adequately his evaluation of alternative tests and the combined effects of
22 the impairments."); see also Lewis v. Apfel, 236 F.3d 503, 514 (9th Cir. 2001)
23 (plaintiff must present plausible theory as to how an impairment or combination of
24 impairments equals a listed impairment) (citations omitted). Remand is
25 appropriate where an ALJ fails adequately to consider a listing that plausibly
26 applies to a plaintiff's case. See Lewis, 236 F.3d at 512, 514 ("An ALJ must
27 evaluate the relevant evidence before concluding that a claimant's impairments do
28 not meet or equal a listed impairment.").

1 In order to be considered disabled under Listing 14.02A a claimant must
2 present evidence that she has systemic lupus erythematosus (“SLE”) “[a]s
3 described in 14.00D1,” and that there was “[i]nvolvement of two or more
4 organs/body systems” with “1. One of the organs/body systems involved to at least
5 a moderate level of severity; and 2. At least two of the constitutional symptoms or
6 signs (severe fatigue, fever, malaise, or involuntary weight loss).” 20 C.F.R. Part
7 404, Subpart P, Appendix 1, § 14.02(A). Section 14.00D1 states that the listing
8 level autoimmune disorder of SLE is documented and evaluated as follows:

9 a. General. Systemic lupus erythematosus (SLE) is a chronic
10 inflammatory disease that can affect any organ or body system. It is
11 frequently, but not always, accompanied by constitutional symptoms
12 or signs (severe fatigue, fever, malaise, involuntary weight loss).
13 Major organ or body system involvement can include: Respiratory
14 (pleuritis, pneumonitis), cardiovascular (endocarditis, myocarditis,
15 pericarditis, vasculitis), renal (glomerulonephritis), hematologic
16 (anemia, leukopenia, thrombocytopenia), skin (photosensitivity),
17 neurologic (seizures), mental (anxiety, fluctuating cognition (“lupus
18 fog”), mood disorders, organic brain syndrome, psychosis), or
19 immune system disorders (inflammatory arthritis). Immunologically,
20 there is an array of circulating serum auto-antibodies and pro- and
21 anti-coagulant proteins that may occur in a highly variable pattern.

22 b. Documentation of SLE. Generally, but not always, the
23 medical evidence will show that your SLE satisfies the criteria in the
24 current “Criteria for the Classification of Systemic Lupus
25 Erythematosus” by the American College of Rheumatology found in
26 the most recent edition of the Primer on the Rheumatic Diseases
27 published by the Arthritis Foundation.

28 20 C.F.R. Part 404, Subpart P, Appendix 1, § 14.00(D)(1).

1 **B. Analysis**

2 First, the record contains evidence that Listing 14.02A plausibly applies in
3 plaintiff's case. Doctors consistently diagnosed plaintiff with recurrent SLE, and
4 the ALJ found SLE to be a severe, medically determinable impairment in plaintiff's
5 case. (AR 12, 204, 206, 212, 213-14, 220, 233-34, 241-42). In addition, treatment
6 records suggest involvement, in part at a "moderate level of severity," with
7 plaintiff's skin (AR 204, 207, 213, 220, 221, 233) and immune system (AR 206
8 [noting "concern for [rheumatoid arthritis] given extensive synovitis"²]; AR 220
9 [noting "organ involvement" including "joints" and "skin"]). The medical records
10 also suggest that plaintiff had at least two of the constitutional symptoms or signs –
11 *i.e.*, severe fatigue (AR 205-07, 213-15) and malaise³ (see, e.g., AR 204-05 [SLE
12 "not well controlled," plaintiff "still has [] a lot of problems"]; AR 206-07
13 [complaints of "cold, aches [and] pains in hands, ankles, knees"])).

14 Second, the boilerplate language in the ALJ's step three determination,
15 without more, is insufficient to support the ALJ's finding that plaintiff's SLE did
16 not meet or medically equal Listing 14.02A. See Lewis, 236 F.3d at 512 ("A
17 boilerplate finding is insufficient to support a conclusion that a claimant's
18 impairment does not [meet or equal a listed impairment].") (citing Marcia, 900 F.2d
19 at 176); see also 42 U.S.C. § 405(b)(1) (An unfavorable Social Security disability
20 decision must "contain a statement of the case, in understandable language, setting
21 forth a discussion of the evidence, and stating the Commissioner's determination
22 and the reason or reasons upon which it is based.").

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25 ²"Synovitis: Inflammation of the synovial membrane, the lining of the joints." Definition
26 of Synovitis, MedicineNet.com web site, available at
<http://www.medicinenet.com/script/main/art.asp?articlekey=5688>.

27 ³"Malaise is a generalized feeling of discomfort, illness, or lack of well-being." Malaise,
28 Drugs.com web site, available at <http://www.drugs.com/enc/malaise.html>.

1 Third, the ALJ's discussion of plaintiff's SLE elsewhere in the decision adds
2 no support to the ALJ's conclusory step-three finding. See generally Lewis, 236
3 F.3d at 513 ("Marcia simply requires an ALJ to discuss and evaluate the evidence
4 that supports his or her [step three] conclusion; it does not specify that the ALJ
5 must do so under the heading 'Findings.'"). For example, the ALJ stated, in part,
6 that plaintiff merely "had complaints of swelling and fatigue and medications were
7 adjusted to coincide with the [plaintiff's] complaints." (AR 14) (citing Exhibits 1F
8 [AR 202-12], 2F [AR 213-24]). This brief statement, however, does not accurately
9 summarize the full content or tone of the exhibits the ALJ cited. See generally
10 Reddick v. Chater, 157 F.3d 715, 722-23 (9th Cir. 1998) (error for ALJ to
11 paraphrase medical evidence in manner that is "not entirely accurate regarding the
12 content or tone of the record"); Gallant v. Heckler, 753 F.2d 1450, 1456 (9th Cir.
13 1984) (ALJ may not selectively rely on only the portions of record which support
14 non-disability) (citations omitted). To the contrary, the referenced medical records
15 document that plaintiff had more, and at times, more severe SLE symptoms and
16 pain over time, some of which persisted *despite* the adjustment of plaintiff's
17 medications at apparently every medical appointment. (AR 211-12 [January 17,
18 2012 Emergency Treatment Record – noting flare up of SLE symptoms with joint
19 pain, swelling, and skin problems]; AR 206-07 [March 23, 2012, treatment record –
20 plaintiff had "recurrent SLE" and was "more fatigued" with occasional swelling,
21 recent (although not current) malar⁴ rash, and "cold, aches [and] pains in hands,
22 ankles, knees," and doctors noted "concern for [rheumatoid arthritis] given
23 extensive synovitis"]; AR 204-05 [May 25, 2012 treatment record – SLE "not well
24 controlled," plaintiff "still has [] a lot of problems," felt "tired," had bilateral knee
25 pain with right knee "now [hurting] more," and possible rash on face]; AR 220-21

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27 ⁴A "malar" is a rash that "may spread over [the] nose and cheeks in the shape of a
28 butterfly." How Lupus Affects Your Skin, WebMD web site, available at
<http://www.webmd.com/lupus/guide/how-lupus-affects-your-skin>.

1 [August 24, 2012 treatment record – SLE “recurrent” with increased symptoms
2 when medication changed, continuing skin problems (which increased with sun
3 exposure), joint pain and swelling (“synovitis”) which had increased in the hands,
4 decreased appetite, and “organ involvement” only with “joints” and “skin”]; AR
5 213-15 [November 30, 2012 treatment record – plaintiff “still” had discoid rash on
6 neck, forehead, and ears, again complained of joint pain in her left hip, right knee,
7 and lower back, and felt “fatigued most of the time”]).

8 The ALJ also noted that on March 7, 2013, plaintiff reported that her
9 symptoms and arthritis were more severe for the month and a half when plaintiff
10 had stopped taking one of her medications (*i.e.* “MTX”) because there were “no
11 refills.” (AR 14) (citing Exhibit 5F at 1-2 [AR 233-34]). Such treatment records,
12 however, still characterized plaintiff’s disease as “active,” documented that
13 plaintiff continued to have joint pain, synovitis (swelling), and arthritis even with
14 medication, and reflected that plaintiff had *not* “denied any SLE on her face” (as
15 the ALJ asserted, (AR 14)), but instead that plaintiff reportedly had “discoid”
16 lesions on her face and ears. (AR 233-34). The ALJ concluded that “[o]n June 7,
17 2013, the [plaintiff] reported doing well overall,” and that “[t]here were no further
18 treatment records for review.” (AR 14) (citing Exhibit 7F at 1 [AR 241]).
19 Nonetheless, the following page of the exhibit the ALJ cited is a treatment record
20 (approved by a medical doctor) which presented detailed clinical findings from the
21 same date (*i.e.*, June 7, 2013) including plaintiff’s continued fatigue, synovitis on
22 both elbows, and “active arthritis.” (AR 242). The ALJ also generally concluded
23 that “the medical records reveal that [plaintiff’s] medications have been relatively
24 effective in controlling [plaintiff’s] symptoms.” (AR 14). In stark contrast,
25 however, the State agency reviewing physicians (to whom the ALJ gave
26 “significant weight”) collectively opined that the treatment records showed that
27 plaintiff’s SLE was “not well controlled.” (AR 44, 49, 51, 62, 71) (emphasis
28 added).

1 Although presumably inadvertent, the multiple incorrect characterizations of
2 the medical evidence above nonetheless call into question the validity of both the
3 ALJ's conclusory evaluation of Listing 14.02A and the ALJ's decision as a whole.
4 See, e.g., Regennitter v. Commissioner, 166 F.3d 1294, 1297 (9th Cir. 1999) (A
5 "specific finding" that consists of an "inaccurate characterization of the evidence"
6 cannot support ALJ's determination); Lesko v. Shalala, 1995 WL 263995 *7
7 (E.D.N.Y. Jan. 5, 1995) ("inaccurate characterizations of the Plaintiff's medical
8 record" found to constitute reversible error).

9 Fourth, the ALJ did not "completely adopt[]" the opinions of any specific
10 reviewing physician regarding plaintiff's limitations, but instead purportedly
11 "adopted [] specific restrictions on a function-by-function basis" that the ALJ
12 determined were "best supported by the objective evidence as a whole," and as
13 discussed above, implicitly rejected the consensus opinion from the only medical
14 experts in the record that plaintiff's SLE was "not well controlled." In light of the
15 foregoing and the instant medical record (which the ALJ found to be "relatively
16 sparse"), it appears that the ALJ's findings regarding plaintiff's SLE-related
17 limitations were erroneously based solely on the ALJ's own, lay interpretation of
18 plaintiff's testimony and the raw data from individual treatment records.
19 Consequently, the ALJ's decision, at least regarding plaintiff's residual functional
20 capacity, also lacks substantial evidentiary support. See Penny, 2 F.3d at 958
21 ("Without a personal medical evaluation it is almost impossible to assess the
22 residual functional capacity of any individual."); Tagger v. Astrue, 536 F. Supp. 2d
23 1170, 1181 (C.D. Cal. 2008) ("ALJ's determination or finding must be supported
24 by medical evidence, particularly the opinion of a treating or an examining
25 physician.") (citations and internal quotation marks omitted); cf. Banks v. Barnhart,
26 434 F. Supp. 2d 800, 805 (C.D. Cal. 2006) ("[ALJ] must not succumb to the
27 temptation to play doctor and make . . . independent medical findings.") (quoting
28 Rohan v. Chater, 98 F.3d 966, 970 (7th Cir. 1996)) (quotation marks omitted);

1 Winters v. Barnhart, 2003 WL 22384784, at *6 (N.D. Cal. Oct. 15, 2003) (“The
2 ALJ is not allowed to use his own medical judgment in lieu of that of a medical
3 expert.”) (citations omitted).

4 Finally, the Court cannot find the ALJ’s errors to be harmless since, as
5 discussed above, the record contains evidence which plausibly supports a finding
6 that plaintiff is disabled at step three under Listing 14.02.

7 Accordingly, it is appropriate to remand the case to permit any further
8 development of the record the Commissioner deems necessary, and so that the ALJ
9 may adequately discuss the evidence as a whole and reevaluate his determination at
10 step three.

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1 **V. CONCLUSION⁵**

2 For the foregoing reasons, the decision of the Commissioner of Social
3 Security is reversed in part, and this matter is remanded for further administrative
4 action consistent with this Opinion.⁶

5 LET JUDGMENT BE ENTERED ACCORDINGLY.

6 DATED: March 18, 2016

7 /s/

8 Honorable Jacqueline Chooljian
9 UNITED STATES MAGISTRATE JUDGE

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17 ⁵The Court need not, and has not adjudicated plaintiff's other challenges to the ALJ's
18 decision, except insofar as to determine that a reversal and remand for immediate payment of
19 benefits would not be appropriate. On remand, however, the Commissioner may also wish to
20 reassess plaintiff's credibility which currently appears to be based mostly on the lack of medical
21 evidence. See, e.g., Burch, 400 F.3d at 681 ("lack of medical evidence cannot form the sole basis
22 for discounting pain testimony"); see also Brown-Hunter, 806 F.3d at 489, 493-94 (legal error
23 where ALJ failed to identify claimant's testimony found not credible and failed to "link that
24 testimony to the particular parts of the record supporting her non-credibility determination")
(citing Burrell v. Colvin, 775 F.3d 1133, 1139 (9th Cir. 2014)); Garrison v. Colvin, 759 F.3d
995, 1015 (9th Cir. 2014) ("The clear and convincing standard [for discounting claimant's
credibility] is the most demanding required in Social Security cases.") (citation and internal
quotation marks omitted).

25 ⁶When a court reverses an administrative determination, "the proper course, except in rare
26 circumstances, is to remand to the agency for additional investigation or explanation."
27 Immigration & Naturalization Service v. Ventura, 537 U.S. 12, 16 (2002) (citations and
28 quotations omitted). Remand is proper where, as here, "additional proceedings can remedy
defects in the original administrative proceeding. . . ." Garrison, 759 F.3d at 1019 (citation and
internal quotation marks omitted).